

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONSDAY, THE EIGHTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 127 of 2004

Between:

C. Kuppaiah Naidu, S/o Vengama Naidu,
R/o Mogilivaripalli, Bangarupalem Mandal, Chittoor District.

..... PETITIONER

AND

- 1 The District Collector, Chittoor District, Collectorate,
Greemspet, Chittoor.
- 2 The Revenue Divisional Officer, Chittoor Division, Chittoor.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue writ, order or direction more particularly in the nature of Writ of Certiorari by calling for the records relating to the notifications issued under Section 4(1) of the Land Acquisition Act, 1894 dated 8-9-2000 published in the Chittoor District Gazette Extraordinary No. 63/CTR/2000 and Declaration under Section 6 of the Land Acquisition Act dated 16-9-2000 published in the Chittoor District Gazette Extraordinary No. 69/CTR/2000 and notice under Section 9(1) and (10) of the Land Acquisition Act issued by the Revenue Divisional Officer, Chittoor in Roc.F/283/2000, dated 20-11-2003 and notice under Section 9(3) and (10) of the Land Acquisition Act dated 20-11-2003 in Roc.No. F/283/2000, and quash the same as being invalid, arbitrary and violative principles of natural justice and Article 300-A of the Constitution of India and against the provisions of Section 17(5) (a)& (b) added by A.P. Act of 9/1983 of the Land Acquisition Act, 1894.

Counsel for the Petitioner: MR.D.VIJAYACHANDRA REDDY

Counsel for the Respondents: GP FOR LAND ACQUISITION

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION 127 OF 2004

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ORDER:

The petitioner claims that he along with his son jointly owns an extent of Acs.10.00 of land. He also owns an extent of Acs.0.14 in Survey No.269/1B1 and Acs.0.22 in Survey No.269/2A in Mogili village of Bangarupalyam Mandal. The first respondent issued a notification under Section 4(1) of the Land Acquisition Act, 1894 (the Act, for brevity) proposing to acquire an extent of Acs.0.14 of land in Survey No.269/1B1 and Acs.0.22 of land in Survey No.269/2A of the petitioner for the purpose of providing pathway to burial ground from ST colony of Balijapalle, hamlet of Mogili. A declaration under Section 6 was also issued and thereafter the second respondent issued notice under Sections 9(1) and 10 of the Act to the petitioner requiring him to appear before the second respondent on 01.12.2003. The petitioner filed the present writ petition assailing the notification and declaration as well as notice under Sections 9(1) and 10 of the Act.

The petitioner alleges that wealthy landowners in the village approached the petitioner for buying the land. When the petitioner refused to sell the land, they prevailed upon the authorities and got the proceedings for acquisition initiated, though there is no ST colony in the vicinity. Therefore, the petitioner contends that the notifications impugned are vitiated by colourable exercise of power and non-application of mind. The enquiry under Section 5-A of the Act was dispensed with without application of mind. It is also the case of the petitioner that though the notification was issued on 08.09.2000, the possession was not taken. Therefore, as per Section 17(5)(a) of the Act, it should be inferred that there is no urgency for acquisition of the land. It is also the contention of the petitioner that the respondents have not passed any award under Section 11-A of the Act within a period of two years and therefore the proceedings have lapsed. On the basis of these contentions,

the petitioner seeks invalidation of the impugned notifications.

In the counter affidavit filed by the second respondent, it is stated that the petitioner herein is the head of the joint family, which holds an extent of Acs.13.00 of land including the land acquired. Award is passed being Award No.11/2003–04 dated 17.01.2004 acquiring the land for provision of pathway to burial ground from ST colony of Balijapalle, hamlet of Mogili. In view of the urgency, enquiry under Section 5-A of the Act was dispensed with but the publicity was given by publishing the substance of the notification in Chittoor District Gazette as well as local Telugu newspapers. The contention that the petitioner is not aware of the publication is not true. The petitioner and his deceased son Subramanyam Naidu filed a suit being O.S.No.392 of 2001 on the file of the Court of the Junior Civil Judge, Chittoor for injunction restraining the Government from interfering with the possession and enjoyment of the property. Though the land, which is necessary for providing pathway, was demarcated for taking advance possession, the possession could not be taken in view of *status quo* orders passed by the Court of Junior Civil Judge, Chittoor, in I.A.No.349 of 2001 on 23.04.2001, which was made absolute on 03.01.2002. So as to obtain such interim orders from the Civil Court, the petitioner suppressed the land acquisition proceedings, as the Civil Court has no jurisdiction to interfere with the proceedings under the Land Acquisition Act. In view of the interim orders, it was decided to take possession of the lands after passing award under Section 11-A of the Act. Merely because possession is not taken within a period of three months, it cannot be said that there is no urgency to invoke Section 17(4) of the Act.

Learned counsel for the petitioner, Sri D.Vijayachandra Reddy, submits that the suit was filed by the petitioner and his son without having any knowledge of the land acquisition proceedings and therefore the interim orders passed by the Civil Court have no relevance in so far as Section 11-A of the Act is concerned. He, however, does not dispute that the Civil Court has no jurisdiction to interdict the proceedings initiated under the Act. He also submits that the notification under Section 4(1) of the Act and declaration under Section 6 of the Act approved on the same day and therefore they are illegal. Lastly, he would urge that the Award was not passed within a period of two years, under Section 11-A of the Act, and therefore the land acquisition proceedings have lapsed. **Per contra**, learned Assistant Government Pleader for Land Acquisition would contend that though the provisions of Section 17(4) of the Act were invoked, possession could not be taken in view of the orders of *status quo* passed by the Court of Junior Civil Judge, Chittoor and it was decided to take possession of the land after passing the award. Accordingly, award was passed. Refuting the allegation made by the petitioner that the award was passed after the interim orders of this Court, learned Assistant Government Pleader would submit that the copy of the award was received by the second respondent on 31.01.2004 and therefore the award is not vitiated.

The original file in relation to Award No.11/2003-04 dated 17.01.204 has been placed before this Court. A perusal of the same would amply prove various averments made in the counter affidavit. The allegation of the petitioner that there is no necessity for acquiring land for pathway stands belied by a letter dated

24.01.2000 addressed by the Mandal Revenue Officer, Bangarupalyam to the second respondent, which refers to a representation of the villagers of Yanadi colony requesting to provide a pathway from their houses in Survey No.269-3 classified as Nagulakunta Poramboke to the burial ground in Balijapalle. Be that as it is, there are two questions need to be considered in appreciation of the submissions of the learned counsel.

The first question for consideration is the effect of the interim orders passed by the Court of the Junior Civil Judge, Chittoor in I.A.No.349 of 2001 in O.S.No.392 of 2001. The second question is effect of delay if any in passing the award. It is well settled that a civil suit relating to acquisition proceedings is not maintainable and by implication the cognizance of a suit under Section 9 of the Code of Civil Procedure, 1908, is barred. (See **Laxmi Chand v Gram Panchayat** and **S.P.Subramanya Shetty v Karnataka State Road Transport Corporation**). Therefore, in a given case, even when a person objects to acquisition of the land under the provisions of the Act on the ground that there is an injunction order passed by the Civil Court, the same is insignificant. Whatever be the order passed by the Civil Court, it would not prevent the second respondent from passing award. The submission of the learned counsel in this regard that the proceedings in the Civil Court are not in relation to land acquisition is liable to be rejected. In this case, notification under Section 4(1) of the Act was published in Chittoor District Gazette on 08.09.2000, whereas the petitioner filed the suit before the Civil Court in April, 2001 and it is reasonable to draw an inference that the suit was filed only to prevent the land acquisition proceedings. At the initial stages, the respondents thought that in view of the interim orders passed by the Civil Court, the acquisition proceedings should lie over. But subsequently, award was passed on 17.01.2004, which in the opinion of this Court is well within law.

The submission of the learned counsel for the petitioner is that as per the explanation to Section 11-A of the Act, time of two years gets extended when a Court passes an order in relation to the land acquisition and not otherwise. As already mentioned above, the petitioner filed a suit after the publication of notification under Section 4(1) of the Act and therefore it must be held that the second respondent was justified in not passing award though the interim injunction has no effect on the land acquisition proceedings. It must be remembered that explanation to 11-A of the Act does not refer to only High Court order in relation to declaration under Section 6 of the Act. It can be an order passed by any Court, after the declaration is made by the District Collector and it can be any type of order, which tends to stall any of the steps in the acquisition proceedings. A reference may be made to the decision of the Supreme Court in **Yusufbhai Noormohmed Nendoliya v State of Gujaraj**, in which a Division Bench of the Supreme Court interpreting the words “any action or proceedings” appearing in the explanation to Section 11-A of the Act laid down as under.

The said Explanation is in the widest possible terms and, in our opinion, there is no warrant for limiting the action or proceedings referred to in the Explanation to actions or proceedings

preceding the making of the award under Section 11 of the said Act. In the first place, as held by the learned Single Judge himself where the case is covered by Section 17, the possession can be taken before an award is made and we see no reason why the aforesaid expression in the Explanation should be given a different meaning depending upon whether the case is covered by Section 17 or otherwise. On the other hand, it appears to us that the Explanation is intended to confer a benefit on a land-holder whose land is acquired after the declaration under Section 6, is made in cases covered by the Explanation. The benefit is that the award must be made within a period of two years of the declaration, failing which the acquisition proceedings would lapse and the land would revert to the land-holder. **In order to get the benefit of the said provision what is required, is that the land-holder who seeks the benefit must not have obtained any order from a Court restraining any action or proceeding in pursuance of the declaration under Section 6 of the said Act so that the Explanation covers only the cases of those land-holders who do not obtain any order from a Court which would delay or prevent the making of the award or taking possession of the land acquired.**

(emphasis supplied)

The above decision was followed in **L.N.Venkatesan v State of Tamil Nadu**.

The petitioner in the affidavit accompanying the writ petition suppressed the factum of approaching the Civil Court by filing a suit. This suppression of the fact disentitles petitioner for any relief, as the remedy under Article 226 of the Constitution of India is discretionary and this Court having regard to the conduct of the petitioner can always deny the relief. In **G.Narayanaswamy Reddy v Government of Karnataka**, apex Court denied the relief to the petitioners therein on the ground of suppression of facts. It was held therein as under.

Where a special leave petition was filed on the ground that the acquisition of lands in question lapsed as award was not made within two years of notification of declaration, the non-disclosure of fact that interim stay orders were passed in a writ petition staying further proceedings of acquisition in respect of lands in question would certainly amount to suppression of material facts in view of Section 11-A of Land Acquisition Act which provided that the period during which any action or proceeding to be taken in pursuance of the declaration is stayed by an order of a Court shall be excluded, and consequently, the special leave petition was liable to be dismissed.

Therefore, this Court is not inclined to countenance the submission of the learned counsel for the petitioner that there was no stay granted by any Court resulting any extension of time for passing award. Further, this Court also is not inclined to accept the other submission that the award was passed in breach of the orders of this Court dated 07.01.2004 in W.P.M.P.No.194 of 2004. The entire record is produced before this Court, and the same would reveal that the copy of the order of this Court was received by the Land Acquisition Officer on 31.01.2004 and the award must be held to have been validly passed. The learned counsel for the petitioner has not pressed any other ground urged in the affidavit.

The writ petition is devoid of merits and is accordingly dismissed.

(V.V.S.RAO,J)

08.11.2004.

pln

To

1. The District Collector, Chittoor District, Collectorate, Greemspet, Chittoor.
2. The Revenue Divisional Officer, Chittoor Division, Chittoor.
3. 2 CCs to the G.P. for Land Acquisition, High Court Buildings, Hyderabad (OUT).
4. 2 CD copies.